

CITY OF FREDERICK
ZONING BOARD OF APPEALS
PROJECT STAFF REPORT

April 22, 2014

PROJECT INFORMATION

AGENDA ITEM:	A.
NAME OF PROJECT:	1550 Opossumtown Pike
TYPE OF PROJECT:	Variance
CASE NUMBER:	ZBA14-195V
OWNER:	Schaden Family LLC
PROJECT ADDRESS:	1550 Opossumtown Pike
APPLICANT:	Dr. Michael E. Schaden Opossum Pike Veterinary Clinic
PHONE:	301-662-2322
ZONING:	General Commercial (GC) Highway Noise Overlay (HNO)
REVIEW BY:	Jeffrey D. Love
DATE:	April 15, 2014
PROPOSED ACTION:	The Applicant is requesting approval of a variance to §864(b)(10) to install a 36 sf roof-mounted sign.
EXHIBITS:	Application and Attachments Final Site Plan

BACKGROUND INFORMATION

As part of the improvements to the Route 15/ Motter Avenue Interchange and expanded improvements to the Opossumtown Pike corridor land was acquired along the frontage of several private properties in the area, including the subject property. The State Highway Administration acquired varying widths of 30-50' along the frontage of the property to expand the Opossumtown Pike right-of-way.

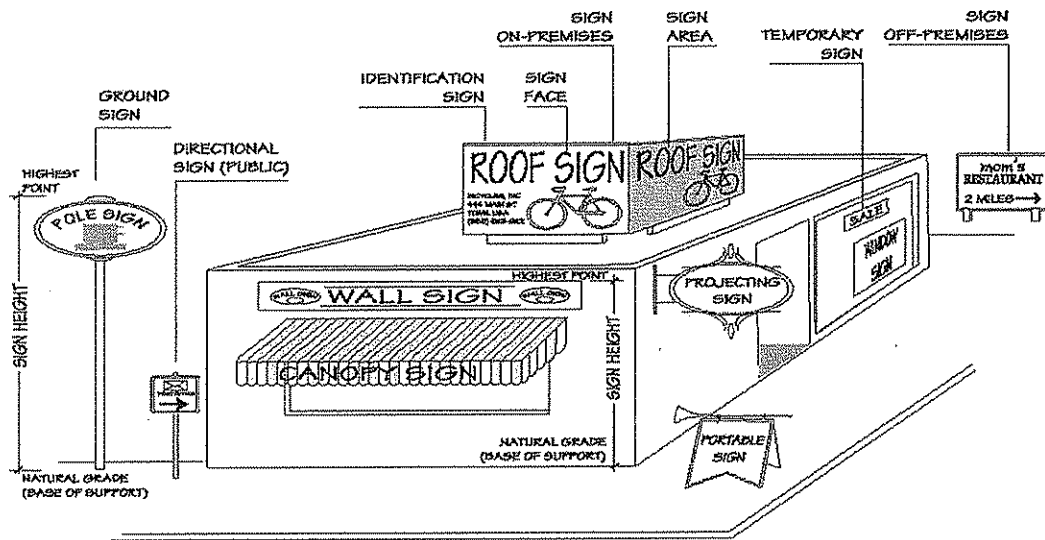
The reduction in the front yard area has significantly affected the layout of improvements on the site. The green space previously available is no longer provided and the drive aisle accessing the parking lot now occupies the entire frontage. Formerly, the Applicant was able to place a freestanding identification sign in the green space along the frontage. With the elimination of this area, the sign had to be removed leading to the variance request for roof mounted signage.

Per Section 864 of the LMC entitled, *Sign Regulations*, the amount of signage allowed on a site is based on the zoning of a property, the use, and the amount of building frontage.

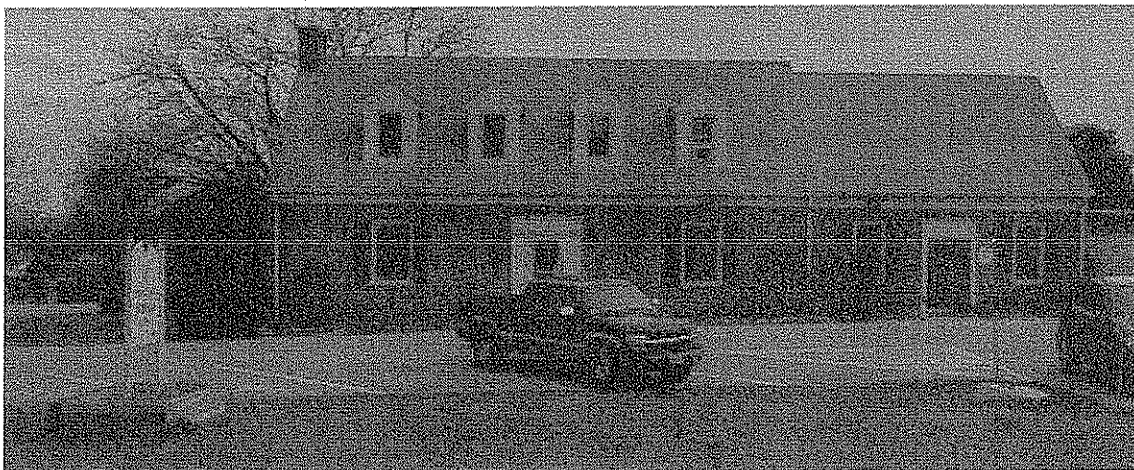
That total maybe allocated into building mounted or freestanding signage in the majority of the districts, however, roof-mounted signage is prohibited in all districts. Per Section 313 of the LMC, the ZBA can grant variances to the requirements of Articles 4 and 8, including the signage provisions.

The definitions section of the LMC, §1002, includes the following diagram as it relates to the various types of signage.

Sign-Related Definitions.



Conditions of the property prior to Opossumtown Pike widening project.



STAFF COMMENTS & ANALYSIS

The City of Frederick Land Management Code (LMC) allows the Zoning Board of Appeals to grant variances from certain provisions or requirements of the Code when all of the conditions set forth in Section 313(c) are met.

1. The variance is not contrary to the public interest.

Applicant responds: The public interest is served by the sign as it enables the public seeking our services to quickly and safely identify our business location.

Staff responds: The purpose of Section 864 of the LMC is to permit "the reasonable and consistent communication of messages, while providing regulations that prevent hazardous and unsightly clutter and confusion." The placement of signage on the Property is intended to adequately display information for the business onsite. For reasons discussed in further detail below, Staff also finds that the proposed signage and its placement do not create hazardous or unsightly conditions.

2. Whereby reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, or the use of the property or property immediately adjacent, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exception to or undue hardship upon, the owner of such property.

Applicant responds: As a result of the widening of Opossumtown Pike, the front lawn which held the clinic's previous signage has been eliminated. This has resulted in the need to relocate the signage to an area where clients can safely and easily identify the clinic and which does not interfere with the movement of traffic in and out of the clinic parking area. The only area that meets that criteria is the roof of the clinic over the emergency door exit.

Staff responds: Staff concurs with the Applicant's assessment that the expansion of the Opossumtown Pike right-of-way has created a situation whereby, it is difficult to place freestanding signage in a location that is visible to vehicles traveling along the roadway. The frontage of the lot is now occupied by drive aisles for the parking lot and minimal, if any, green space is available to place a freestanding sign. It should also be noted that any freestanding signage would have to comply with a six (6) foot front setback in accordance with §803, which would place it within the existing drive aisle. As a result, building mounted signage appears to be the only means of advertising the business.

In considering the architecture of the building itself, it is important to note that due to the roof style, the face of the building where wall

mounted/attached signage would normally be placed is limited. The northern and southern ends of the building have more surface area capable of supporting signage, however, it is the western façade that faces the road and as such, is most appropriate for a sign to ensure visibility.

Lastly, Staff would note that freestanding signage is permitted up to 15 feet in height in the GC district. By mounting the signage in the proposed location, the Applicant is seeking to achieve the visibility provided by freestanding signage.

3. The variance requested is the minimum reasonably necessary to overcome the extraordinary or exceptional conditions applicable to the property.

Applicant responds: This is the minimum necessary to overcome conditions created by the road widening project.

Staff responds: As noted above, the acquisition of right of way has created a situation where freestanding signage can no longer be installed on the Property in a manner that complies with the applicable regulations while also providing reasonable functionality to the Applicant. Accordingly, the Applicant is seeking to achieve a commensurate amount of visibility through the use of building mounted signage. Also as noted, due to the architectural styling of the building, there are limited opportunities for the placement of signage along the front façade. Staff finds that the 36 square footage of signage mounted on the roof at a height of no taller than fifteen (15) feet would not exceed the height of freestanding signs otherwise permitted in the GC district and therefore, it is the minimum reasonably necessary to overcome the conditions unique to this property.

4. The literal interpretation of the provisions of this Code would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Code and would prevent the reasonable use of the property by the applicant.

Applicant responds: No other properties in the Opossumtown Pike road widening project lost so much of their area that they could not easily relocate signage if needed. So whereas other businesses were able to retain their current signage, we have not been afforded the same privilege. This has resulted in the loss of name recognition, loss of business, loss of revenue and therefore, a loss of the rights commonly enjoyed by other properties in the area.

Staff responds: The provisions of the Code would prohibit freestanding signage to be constructed in a manner consistent with other properties in the district. The Applicant is seeking equal measures to provide adequate and visible signage on the property.

5. **That granting the variance will not confer on the applicant any special privilege that is denied by this Code to other lands or structures in the same district.**

Applicant responds: Many other businesses on or near Opossumtown Pike have illuminated signs. Their signs, as was ours, were in place prior to the widening of the road. We request the same privilege afforded to these businesses be extended to Opossum Pike Veterinary Clinic.

Staff responds: While the regulations prohibit roof-mounted signs, the Applicant has proven that their ability to provide adequate and visible freestanding signage has been compromised by the road widening project and further that there based on the building design; there are limited opportunities for building mounted signage. Mounting the sign on the roof will allow for adequate visibility for the business on this property as is already provided to others in the district.

6. **That the granting of the variance will be in harmony with the general purpose and intent of this Code, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.**

Applicant responds: The sign we propose would be attached to the roof, below the roof line. It is in actuality, the same size or smaller than most other business signs in the area.

Staff responds: The Applicant has demonstrated that not only is there a practical difficulty to providing adequate and visible freestanding signage due to the widening of the roadway but that the specific building design also significantly limits the placement of functional attached signage. Due to this, the proposal is peculiar to the property and is not likely to become commonplace. The restriction on roof-mounted signage will still serve its purpose in all but the most extraordinary situations. This will ensure that the proposal will not be detrimental or injurious to the public at large.

The proposal is shown to be attached to the pitched roof and does not extend above the ridgeline. It is also attached to the shorter of the two roofs of the building which provides a more aesthetically pleasing proposal. Attempts have been made to minimize any potential impacts.

7. **No variance shall be granted in any case where the applicant or their agent has created or caused to be created a situation which would or has necessitated the issuance of a variance in order for such property to comply with this Code.**

Applicant responds: Our request comes solely as a result of property loss due to the Opossum Pike road widening project.

Staff responds: Staff concurs with the Applicant's assessment. The road widening project was outside of the Applicant's control and exterior forces have created the situation.

Lastly, as described in §312(e) of the LMC, in the decision making process the Zoning Board of Appeals should consider the following to the extent that they apply to the application:

- 1) The purpose, application, interpretation and standards of the LMC;
- 2) The applicable standards established in Articles 8 and 9 of the LMC;
- 3) The applicable legal standards;
- 4) The orderly growth and improvement of the neighborhood and the community;
- 5) The most appropriate use of land and structures in accordance with the Comprehensive Plan;
- 6) Facilities for sewer water transportation and other services and the ability of the City/County to supply these services;
- 7) The limitations of firefighting equipment and means of access for fire and police protection;
- 8) The effect of such use on the peaceful enjoyment of people in their homes
- 9) The number of people residing, working, or studying in the immediate area in order to prevent overcrowding or overconcentration of similar uses;
- 10) The type, character, and use of structures in the vicinity especially where people are apt to gather in large numbers such as schools, churches, theaters, hospitals and the like;
- 11) Traffic conditions including pedestrian facilities and parking facilities;
- 12) The preservation of cultural and historic landmarks;
- 13) The conservation of property values;
- 14) The effect of odors, dust gas smoke fumes vibration glare or noise on surrounding properties;
- 15) The contribution that the building, use or addition would make to towards the deterioration of areas and neighborhoods;
- 16) The objectives of the forest conservation ordinance.

STAFF RECOMMENDATION

FINDING OF FACTS

- The subject property is zoned GC and lies within the HNO.
- §864(b)(10) prohibits roof-mounted signs.
- A significant portion of the front yard of the property was acquired for the expansion of Opossumtown Pike and the Route 15/Motter Avenue Interchange project.

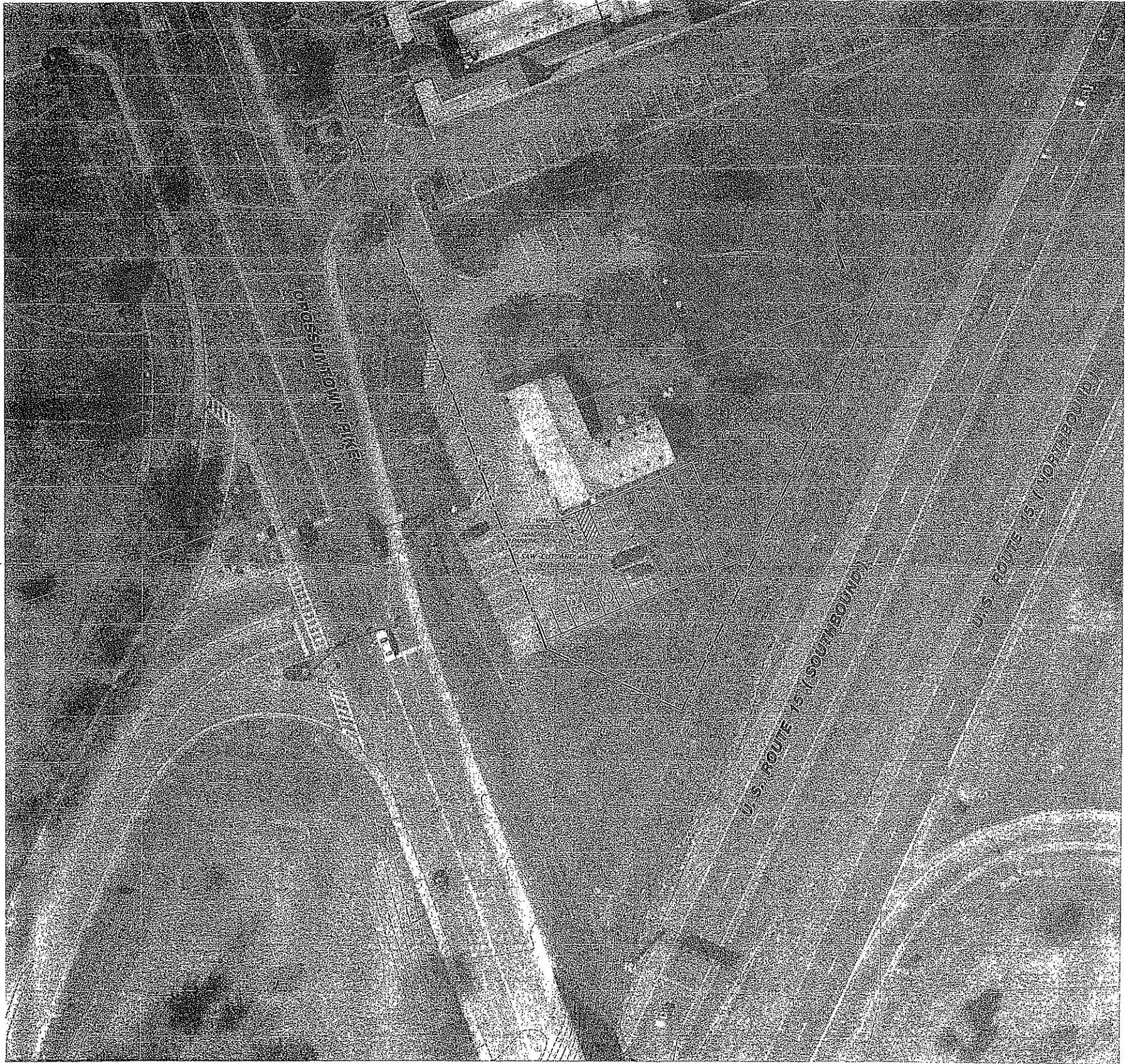
- This expansion of right-of-way eliminated the available green space along the frontage in which to construct a freestanding sign and the building design and roof structure limit the amount of front façade available for building mounted/attached signage.
- The Applicant seeks to construct a 36 SF sign at fifteen (15) feet in height on the pitched roof of the existing structure in lieu of freestanding signage.
- The proposed roof-mounted signage will not extend beyond the maximum height of the roof line.
- The Zoning Board of Appeals may grant a variance if the proposal meets all decision making criteria set forth in §313(c).

STAFF RECOMMENDATION

Based upon the finding of facts, Staff supports a variance to §864(b)(10) to allow for 36 square feet of roof-mounted signage under the powers granted to the Board by Section 203 of the Land Management Code, finding that:

1. The variance is not contrary to the public interest in that the placement of signage on the Property is intended to provide adequate display information for the business onsite..
2. The expansion of the Opossumtown Pike right-of-way has created a situation whereby it is not possible to place freestanding signage in a manner that provides reasonable visibility to vehicles traveling the roadway and the building design and roof structure limit the amount of front façade available for building mounted/attached signage. .
3. The requested variance is the minimum necessary to allow for adequate and visible signage.
4. That the literal interpretation of the LMC would prohibit signage that is consistent with other properties in the district. The Applicant is seeking equal measures to provide adequate and visible signage on the Property.
5. Granting a variance from §864(b)(10) will not confer on the Applicant any special privileges that are denied by the LMC to other lands or structures in the same district due to the proven inability of the subject property to support a freestanding signage that complies with all of the applicable regulations and the circumstances by which the available frontage of the site for signage was eliminated as well as the limited ability to provide adequate building mounted signage.
6. That the granting of the variance will be in harmony with the general purpose and intent of the LMC by allowing the property owner the reasonable allocation and display of signage.
7. That the Applicant has not created the situation which necessitates the variance.

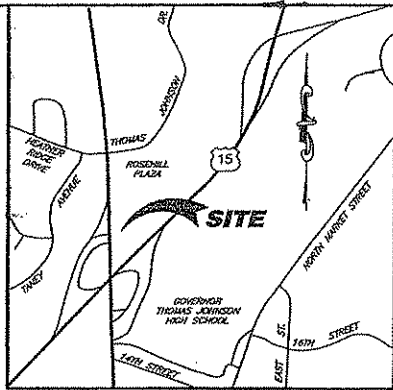
at 11:18 AM on 03/12/2012. The drawing was created on 03/12/2012 at 11:18 AM.



OWNER
SCHADEN FAMILY, LLC
1550 OPOSSUMTOWN PIKE
FREDERICK, MARYLAND 21702
(301) 662-2230
CONTACT: MICHAEL E. SCHADEN, VMD

General Notes

1. Property is zoned General Commercial (GC).
2. Existing and proposed enclosed Area 5,621 SF.
3. Existing use Veterinary Clinic.
4. Proposed use Veterinary Clinic.
5. No Previous recent plan history to engineer's knowledge.
6. No 100 Year Floodplain on site.
7. All structures are existing.
8. The purpose for this site plan is to show the relocated parking spaces necessitated by the MSHA eminent domain/quick take action against property owner which resulted in the taking of 15 parking spaces from property owner.
9. Relocated parking spaces results in 2,852 S.F. of new impervious area and a disturbed area of 2,852 S.F. No s.w.m. or sediment and erosion control required.
10. Parking required: Minimum 1 space per 1,500 S.F. = 5,621 S.F./1,500 S.F. = 3.74 spaces -- use 4 spaces
Maximum 1 space per 150 S.F. = 5,621 S.F./150 S.F. = 37.47 spaces -- use 38 spaces.
Total parking spaces provided -- 26 spaces.



VICINITY MAP
SCALE: 1" = 2000'

OPOSSUMTOWN PIKE VETERINARY CLINIC

SITUATED ON THE EAST SIDE OF OPOSSUMTOWN PIKE
CITY OF FREDERICK, ELECTION DISTRICT No. 2
FREDERICK COUNTY, MARYLAND

SITE PLAN FOR PARKING LOT REVISION DUE TO PUBLIC TAKING

DPPS REVISIONS

DATE: MARCH 2012
DES. WJH
DWN. RND
SCALE: 1" = 30'
PROJECT/FILE NO.
SHEET NO.